

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD
AND JOSEPH C. EVOLA, D.M.D.**

Come now Joseph C. Evola, D.M.D., ("Licensee") and the Missouri Dental Board ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a dentist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo¹, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline his license, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's license, numbered 2010022084 is subject to disciplinary action by the Board in accordance with the provisions of Chapters 621 and 332, RSMo.

¹ All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.



Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Dental Board ("Board") is an agency of the State of Missouri created and established pursuant to § 332.021, RSMo, for the purpose of executing and enforcing the provisions of Chapter 332.

2. Licensee Joseph C. Evola, D.M.D. is licensed by the Board as a dentist, License No. 2010022084. Licensee's Missouri license is current and active.

3. On or about December 30, 2011, the Board received a complaint against Licensee from C.P. C.P. stated that she had her teeth x-rayed and the dental hygienist stated she needed scaling and rooting treatment plan as well as an Arestin treatment plan. C.P. stated that when Licensee saw her, he stated she did need scaling and root treatment but not the Arestin plan. C.P. stated Licensee gave her a price of \$1,534 for the treatment. C.P. stated that she did not get a cleaning but was charged for an exam and x-rays. She stated she received a second opinion on the periodontal disease, scaling and root treatment. The second opinion stated she had gingivitis and needed a cleaning only.

4. As a result of C.P.'s complaint, on April 10, 2012, Board Investigator Kevin Davidson went to Pro Dental in Columbia, Missouri to interview Licensee about C.P.'s complaint. ProDental informed Investigator Davidson that Licensee no longer worked there. The supervising dentist stated that Licensee's contract had not been renewed due to some issues with his work. The supervising dentist stated that Licensee did not do "a very good job with root canals." He stated the patients came back with problems. He stated they had clinical mentors work with Licensee but there were still issues with his work. With regard to C.P., the supervising dentist pulled up her patient record. C.P. was seen by L.N., RDH who probed C.P.'s gums and found some 4mm to 5mm pocketing. The record then showed that Licensee recommended scaling and root planning. During his April 12, 2012, visit, Investigator Davidson met with L.N., RDH. L.N. stated that she usually saw patients before the dentist examined them. She stated she would go over a pamphlet detailing periodontal disease with the patient. She stated she did not inform patients they needed specific treatment. She stated the dentist would diagnose the problems and she would address them. L.N. stated she did not remember anything about C.P. As part of the investigation into C.P.'s complaint, Investigator Davidson met with Dr. Thomas Elliott, DDS who treated C.P. after Licensee. Dr. Elliott stated that he examined C.P. and determined she had gingivitis



and needed scaling. He stated he did not find pockets or bone loss. Dr. Elliott charged C.P. \$126 for her treatment. Investigator Davidson learned that Licensee was working for Dentures and Dental Services in St. Peters, Missouri. On April 26, 2012, Investigator Davidson met with Licensee at his new practice location. Investigator Davidson gave Licensee a copy of C.P.'s complaint and let him review it. Licensee stated that the Arestin treatment was one of "those things that the corporation (Heartland Dental) wanted all the dental hygienists to push." Licensee stated he was not a "fan of Arestin." Licensee stated he went to ProDental in Columbia from a prior practice in Flint, Michigan. Licensee stated he did not like it at ProDental because they pushed production numbers and there were "too many non-dentists making decisions." He stated when his contract was up he left and moved to St. Louis. Licensee stated that it was his opinion that C.P. needed scaling and root planning but not Arestin and that she had "mild, stage 1 periodontoal disease." Licensee stated that gingivitis and mild periodontal disease are the same thing. Licensee stated he did not think the price from ProDental was fair.

5. On or about November 18, 2011, the Board received a complaint regarding Licensee from A.D. A.D. stated she went to Licensee for a root canal. Licensee told A.D. that he thought he could fix it by replacing an old filling. However, A.D. ended up being in more pain and ultimately, Licensee determined a root canal was necessary. A.D. stated that after Licensee worked on her tooth for three-and-a-half hours, he stated that he was unable to finish because "one of her canals was too difficult and curved." Licensee referred A.D. to a specialist. The specialist informed A.D. that the canal was perforated and she could either have it repaired and he would finish the root canal or he could extract the tooth and place an implant. The specialist stated that Licensee definitely caused the perforation during his prior treatment. A.D. asked ProDental to cover the cost of the extraction and implant but they stated they would only refund the filling. The specialist attempted to repair the perforation of the canal. However, it was so severe, he could not, nor could he save the tooth. Neither Licensee nor ProDental agreed to pay for the extraction and implant. A.D. still has the tooth in her mouth due to her inability to pay for the expensive surgery.

6. On or about February 28, 2012, the Board received a complaint regarding Licensee from R.W., Jr. regarding his daughter R.W. The complaint stated that when R.W. went to see Licensee for a chipped tooth, Licensee told her, while fixing the chipped tooth that he could also fill the cavity in another tooth. During the procedure, R.W. saw blood on Licensee's hands, but Licensee assured her that everything was fine. He stated



that her teeth might be sensitive to cold and her mouth sore from being open so long, but that everything went fine. R.W. stated that when she left Licensee's office she told her mother she thought Licensee broke her tooth. In the days following the procedure, R.W. began to have a lot of pain. R.W. was unable to eat because of the pain which was coming from the tooth that Licensee filled, not the chipped tooth. Two weeks later, R.W. went back to Licensee because of the pain. Licensee took an x-ray and told R.W. that the filling was touching a nerve and she would need to have a root canal. Licensee gave her names of dentists to do the root canal and then return to him for the crown. When R.W. saw her subsequent treating dentist, Dr. Bremer, the dentist stated that Licensee drilled too deep, exposing the nerve, and the only way to save the tooth was to do a root canal or extract it. Dr. Bremer stated that because R.W. is 19 years old, extracting the tooth will cause all her other teeth to move. R.W. paid \$2,509 for the root canal and crown.

7. On or about May 23, 2012, the Board received a written response from Licensee regarding his treatment for R.W. Licensee stated he remembered R.W.'s case and "fe[lt] bad about what happened." He stated the practice compensated R.W. money to have the root canal done in "good faith" and not as an admission of guilt or wrong doing. Licensee stated he would "swear under oath the standards of practicing in our practice exceed the norm." Licensee stated that R.W. came to the practice for a broken tooth, tooth #15. He stated the initial visual exam revealed the oral cavity "in need of moderate to extensive repair." Licensee stated that the x-ray revealed a total break of the DL cusp secondary to advanced decay. Licensee stated that the x-ray revealed multiple areas of decay, some advanced, especially tooth #31. Licensee stated before restoring tooth #15 with a filling, Licensee asked R.W. if she wanted him to also restore tooth #14 which had mesial and occlusal decay. Licensee stated that R.W. agreed and the decay was removed from both teeth and fillings bonded into both. Licensee stated that there was "bleeding and lots of it." He stated he explained to R.W. that it was because he had to wrap metal matrix bonds around the teeth to allow the filling material to be packed into the teeth. Licensee stated that most often the border of the bands slides into the gums and irritates them. Licensee stated that R.W.'s gums were "so red and swollen from plaque and tartar, they bled quite a bit." Licensee stated he did explain this to R.W. but "she obviously didn't hear what I told her about this." Licensee stated that with regard to the pain in tooth #14, when he finished removing all of the decay in the tooth, "visually it didn't appear I was close to the pulp nor was there a pulp exposure." Licensee stated that if there had been exposure he would have "referred [R.W.] to an endodontist (root canal doctor) immediately." He



admitted that he was surprised when he looked at the post-op x-ray and how close the filling was to the pulp.

Licensee stated "I would swear that only decayed tooth structure was removed from that tooth (#14)." Licensee stated he did not believe the standard of care was compromised at all.

8. Licensee appeared before the Board at its August 2, 2012 board meeting. Licensee stated that at the present time, he is not performing any endodontics. He stated that when he was doing endodontics and diagnosis, the radiographs were very important. He stated he went a lot by the symptoms of the patient, the x-ray, caries, pulp, visual swellings, and fistulas. He stated he never used an electric pulp tester. He stated he used other diagnostic tools such as Endo-ice and periodontal probing. He stated that after determining a patient needed a root canal, he first talked to the patient and once the patient's questions were answered, he would anesthetize the patient, first with topical solution and then the injection. Once the patient was properly anesthetized, he would probe the tooth some, then remove the caries with a high speed tool. After cleaning the tooth, Licensee stated he would go into the pulp chamber and determine if the tooth was restorable. He stated he would take a path finder and make sure he could find all the canals. He stated that when drilling the tooth, the drill would "Kind of drop into the pulp chamber." He stated he could usually tell because first he felt a little resistance and then a drop. Licensee provided dental records for ten patients on whom he performed endodontic work and the Board determined that sixty percent of the cases had issues with the endodontic work Licensee performed. Licensee reviewed x-rays of patients with the Board during his appearance. With regard to Patient 1, Licensee stated that his access to the canal was "a little big, bigger than I would have wanted to." He stated there was no reason for it to be that big. Licensee acknowledged that he removed too much tooth structure and possibly compromised the tooth. With regard to Patient 2, Licensee stated he was embarrassed to look at the x-ray. He stated it was "a complete embarrassment to even look at [it]." Licensee performed a deep restoration underneath the crown which resulted in irreversible pulpitis where Licensee had done very poor endodontic work in accessing the root canal on the tooth that resulted in the patient losing the tooth. With regard to Patient 3, Licensee slightly perforated the furca of the patient and had poor access to the root canal. With regard to Patient 4, Licensee's endodontic work resulted in too large of an access to the root canal to the point that the tooth became compromised with a high probability of fracture down the root. With regard to Patient 8, the way Licensee accessed the root canal resulted in a portion of the tooth missing and the tooth itself being compromised. Licensee acknowledged that the quality of care was concerning. Licensee stated he did



go to some continuing education courses but no one at the dental practice ever checked on his work unless a patient came back into the practice with a concern or problem. Licensee stated he was in a big hurry to get the endodontic work done on his patients which resulted in the large accesses to the canal and problems described above and dental work below the standard of care including compromised and broken teeth.

9. Licensee's actions as described in paragraphs 3 through 8 above constitute incompetency, misconduct, fraud, misrepresentation and gross negligence in the functions and duties of a licensed dentist in that Licensee provided care below the standard of care of a licensed dentist for which the Board has cause to discipline Licensee's license.

10. Licensee's actions as described in paragraphs 3 through 8 above constitute violation of a professional trust or confidence in that Licensee provided care below the standard of care of a licensed dentist for which the Board has cause to discipline Licensee's license.

11. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5) and (13), RSMo, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

...

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

...

(13) Violation of professional trust or confidence[.]

Joint Agreed Disciplinary Order

12. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo: The terms of discipline shall include that the dental license, license number 2010022084, be placed on **PROBATION** for a period of three (3) years ("disciplinary period"). During Licensee's probation, Licensee shall



be entitled to engage in the practice of dentistry under Chapter 332, RSMo, provided he adheres to all of the terms of the Board Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

- A. Licensee shall take and pass the Board's jurisprudence examination within the first twelve (12) months of Licensee's period of probation. Licensee shall contact the Board office to request a current law packet and permission to sit for the jurisprudence examination no less than thirty (30) days prior to the date Licensee desires to take the examination. Licensee shall submit the required re-examination fee to the Board prior to taking the examination. Failure to take and pass the examination during the first twelve (12) months of the disciplinary period shall constitute a violation of the Board Settlement Agreement.
- B. Licensee shall successfully complete one hundred (100) hours of education in endodontic continuing education and remediation at Oral Health Enrichment in Cleveland, Ohio within the first one hundred eighty (180) days of the beginning of Licensee's period of probation. Following completion of the one hundred (100) hours of education at Oral Health Enrichment, Licensee shall take and pass a written outcome assessment test on the education with a score of at least 80%. Licensee shall also take and pass a clinical competency examination with an emphasis on endodontics. Failure to complete the education and pass the written and clinical outcome assessment tests on the education within 180 days shall constitute a violation of the Board Settlement Agreement.

II. GENERAL REQUIREMENTS

- A. Licensee shall meet with the Board or its representatives at such times and places as required by the Board after notification of a required meeting.
- B. Licensee shall keep the Board apprised of his current home and work addresses and telephone numbers. Licensee shall inform the Board within ten days of any change of home or work address and home or work telephone number.
- C. Licensee shall comply with all provisions of the Dental Practice Act, Chapter 332, RSMo; all applicable federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri and all other states and territories of the United States.
- D. During the disciplinary period, Licensee shall timely renew his license and timely pay all fees required for licensing and comply with all other board requirements necessary to maintain Licensee's license in a current and active state.
- E. If at any time during the disciplinary period, Licensee removes himself from the state of Missouri, ceases to be currently licensed under provisions of Chapter 332, or fails to advise the Board of his current place of business and residence, the time of his absence, unlicensed status, or unknown whereabouts shall not be deemed or taken as any part of the time of discipline so imposed in accordance with § 332.321.6, RSMo.
- F. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Board's representatives to monitor his compliance with the terms and conditions of this Settlement Agreement.
- G. If Licensee fails to comply with the terms of this Settlement Agreement, in any respect, the Board may impose such additional or other discipline that it deems appropriate, (including imposition of revocation) following a hearing before the Board.



- H. This Settlement Agreement does not bind the Board or restrict the remedies available to it concerning any other violation of Chapter 332, RSMo, by Licensee not specifically mentioned in this document.

III. ADDITIONAL REQUIREMENTS

- A. Licensee shall not allow his license to lapse.
- B. Licensee shall notify, within 15 days of the effective date of this Settlement Agreement, all hospitals, nursing homes, out-patient centers, surgical centers, clinics, and all other facilities where Licensee practices or has privileges of Licensee's disciplinary status. Notification shall be in writing and Licensee shall, contemporaneously with the giving of such notice, submit a copy of the notice to the Board for verification by the Board or its designated representative.

13. The parties to this Agreement understand that the Missouri Dental Board will maintain this Agreement as an open record of the Board as provided in Chapters 332, 610, 324, RSMo.

14. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

15. Licensee, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

16. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement



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MISSOURI DENTAL BOARD

agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to:

Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.


17. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect. If Licensee does not request review by the Administrative Hearing Commission, the settlement agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.

LICENSEE


Joseph C. Evola, D.M.D.

Date 10/7/2013

BOARD


Brian Barnett,
Executive Director
Missouri Dental Board

Date 10/15/13

